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IN THE

Supreme Court of the United States

October Term, 1965

No. 665

ETHEL C. RUDICK,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES; KENNETH N. CHANTRY, as Presiding Judge; LLOYD S. NIX, as Chairman, Personnel and Budget Committee; and EDWARD C. GALLAS, as Executive Officer,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the United States.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES; KENNETH N. CHANTRY, as Presiding Judge; LLOYD S. NIX, as Chairman, Personnel and Budget Committee; and EDWARD C. GALLAS, as Executive Officer,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the United States.

Petitioner prays that a writ of certiorari issue to review the decisions of the District Court of Appeal of the State of California in and for the Second Appellate District and of the Supreme Court of California, respectively, entered in the above case.

Opinions Below.

The opinion of the District Court of Appeal of the State of California, Second Appellate District, was not reported. Said opinion of the District Court of Appeal was only a minute order denying the petition without

opinion, reported on June 14, 1965 in 235 Advance California Appeals No. 1, Minutes, p. 5, Case No. 29499.

The opinion of the Supreme Court of California was only a minute order denying the petition, without opinion, reported on July 14, 1965 in 63 Advance California Reports, No. 3, Minutes, p. 3, Case No. 29499.

Jurisdiction.

The Personnel and Budget Committee of the Superior Court of Los Angeles County did on December 1, 1964, without a hearing discharge petitioner from her position as Official Reporter of the Superior Court of the State of California for the County of Los Angeles, Respondent. The Committee twice denied her request to permit her to appear before the Committee, first on December 22, 1964, and again on May 13, 1965, and to answer any charges made against her competency to serve as a court reporter.

The determinations of the State Appellate and Supreme Courts rejected without opinion the constitutional questions of denial of due process and of equal protection of the laws under the United States Constitution, XIVth Amendment, Sec. 1; and under the California Constitution, Art. I, Sections 13 and 21, which Petitioner raised before each court. Petition for an Alternative Writ of Mandate was denied by the District Court of Appeal, Second District, on June 14, 1965; and hearing was denied by the California Supreme Court on July 14, 1965.

That the Appellate Court and the Supreme Court respectively, rejected Petitioner's claims that she was entitled to a public hearing under the provisions of sec-

tions 19578, 19583.5, 19587, and 54957 of the Government Code of California before she could lawfully be discharged from her employment. That, additionally, Petitioner has asserted that the rules of the Superior Court providing for a discharge of a *public* employee by the Personnel and Budget Committee without a judicial review violated the due process rights of the Petitioner under the Fourteenth Amendment of the United States Constitution.

The jurisdiction of this court is invoked under 28 U.S.C. 1253(3).

The rule of the Superior Court of Los Angeles County was an exercise of legislative power delegated to the Personnel and Budget Committee by the Legislature of the State of California having due force of a law so that it may be considered as a law within the meaning of the Fourteenth Amendment of the United States Constitution.

Section 68070 Government Code.

A rule of the Superior Court of Los Angeles County provides that all employees serve at the pleasure of the court; that the Executive officer of the Superior Court may terminate the services of any employee after consultation with the judge of the department concerned, and the approval of the Presiding Judge. Any "regular employee may appeal such action to the Personnel and Budget Committee." Rule 32 Addendum.

Upon considering such appeal the Personnel Committee "may hold a hearing thereon if it deems it advisable."

The determination of such appeal by the Personnel Committee "shall be final".

Cases Believed to Sustain the Jurisdiction of the Court.

Cafeteria and Restaurant Workers Union, 367 U.S. 886, 6 L. Ed. 2d 1230 (1961), 18 S. Ct. 1748;

Joint Anti-Fascist Refugee Committee v. McGrath (1951), 341 U.S. 123, 172, 71 S. Ct. 624, 644, 95 L. Ed. 817;

Coe v. Armour Fertilizer Works, 237 U.S. 413.

Slochower v. Board of Education (1956), 350 U.S. 551, 555, 76 S. Ct. 637, 100 L. Ed. 692;

Wieman v. Updegraff (1952), 344 U.S. 183, 191, 192, 73 S. Ct. 215, 97 L. Ed. 216;

United Public Workers of America v. Mitchell (1947), 330 U.S. 75, 100, 67 S. Ct. 556, 91 L. Ed. 754;

Shelton v. Tucker (1960), 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231.

The Constitutional Questions Were Timely Raised.

The original petition for a writ of mandamus was filed by Petitioner in the District Court of Appeal. The federal questions were raised in that petition. They were renewed in the petition filed with the State Supreme Court.

Angel v. Bullington, 330 U.S. 183;

First National Bank v. Anderson, 269 U.S. 341, 346;

Kaukauna Company v. Green Bay, 142 U.S. 254, 269.

The Federal Questions Are Substantial.

Petitioner has raised a question which strikes at the very essence of due process of law. There could hardly be a case of more arbitrary action and an unconstitutional usurpation of power by judicial act than in the case now before this Honorable Court. If the Superior Court of Los Angeles County may continue to discharge its certified court reporters without according such employees a right to a hearing, to hear the charges, to cross-examine the witnesses, to be represented by counsel and to present evidence in their defense then the constitutional right to be protected in public employment has been abolished by judicial fiat in California.

Questions Presented.

I.

1. Was a certified shorthand reporter who functioned as an official reporter of the Superior Court of the State of California for the County of Los Angeles denied due process of law under the U.S. Constitution—14th Amendment, Sec. 1—by refusal of her employer, Respondent Court, to grant her a hearing at which she and/or her counsel could appear, subpoena witnesses, examine all evidence against her and defend against certain charges for which she had been terminated without notice or hearing by said Respondent?

2. Does a rule of the Los Angeles Superior Court which makes it discretionary for a court committee to grant a regular court reporter a hearing where requested after her discharge by the Court's executive officer violate the due process clause of the Fourteenth Amendment when such a hearing is refused?

3. Was not a certified shorthand reporter who functions as an official reporter of the Superior Court de-

nied equal protection of the law under the U.S. Constitution 14th Amendment Sec. 1, by refusal of her employer, Respondent Court, to give her the same opportunity granted to other public employees to appear at a hearing before her public employment as a certified shorthand reported could be terminated?

4. Was petitioner denied a protectible right to work under the Fourteenth Amendment of the United States Constitution by the Respondent Court's action?

Statement.

This application for certiorari from the California Supreme Court's refusal to review the procedure used by the Respondent Lloyd S. Nix, as Chairman of the Personnel and Budget Committee (hereinafter called "the Committee"), in hearing the discharge of a court reporter arose when Mrs. Ethel C. Rudick (hereinafter called "Petitioner") was first suspended and then terminated for alleged refusal to read back a portion of her notes at the direction of Superior Court Judge Samuel R. Blake in a civil suit being tried in Department 47 of Respondent Superior Court of the County of Los Angeles (hereinafter called the "Court").

As a certified shorthand reporter who had qualified under California Business and Professions Code, Div. 3, Chap. 13 (Sections 8000-8032), Petitioner was due to report to work on June 11, 1964 in Judge Blake's Court as an Official Reporter— a position which she had filled since March 1957.

Just before commencing work, she received a telephone call from her husband, who had been hospitalized for psychiatric treatment, in which he had threatened to kill himself if he were not released. Petitioner immediately became very upset, so much so that, as she

reported in a letter requesting a hearing before the Committee [Ex. 2], this information rendered her "so overwrought as to be very sick and weak, at the time in question" [*Ibid.*, p. 1, lines 31-32].

Despite her illness, and knowing of a scarcity of court reporters, she worked the morning of June 11th. Knowing also that she was supposed to report an illness to her supervisor, Miss Helen Keevan, she did so.

Miss Keevan attempted in vain to find a replacement. Whereupon, the Petitioner returned to her courtroom duties for the afternoon session, in a highly upset emotional state [*Ibid.*, p. 2, lines 5-9].

When Judge Blake asked her to read back some notes from the morning proceedings, she failed to do so. Despite repeated requests which ultimately became an order by the court, Petitioner remained unable to comply.

As Petitioner could not then do what had been asked of her, the court remarked to the jurors ". . . it is obvious that we have with us a very incompetent reporter." [Ex. 13, p. 4, lines 1-2].

Petitioner retired in tears. Although she could not read her notes, after a brief rest, she began typing for Judge Blake the portion of the transcribings which he had requested [*ibid.* p. 4, lines 14-15]. One page was duly delivered the next day to the judge by Petitioner's supervisor [Ex. 10, p. 5, lines 1-2; Ex. 13, p. 4, lines 19-24].

Petitioner continued thereafter to serve the Court as official reporter for some four months. The quality and suitability of her efforts may be gauged by (1) her work for a number of courts in the Superior Court and (2) her receiving "a step advancement and pay in-

crease" which required, "per Court Rule 32-7(a), a positive declaration by the Department Head and Executive Officer that she was performing at above average competence." [Ex. 13, p. 4, lines 27-30].

On October 16, 1964, Respondent Edward C. Gallas, Executive Officer (hereinafter referred to as "the Executive Officer") informed Petitioner that Judge Blake had filed a formal complaint against her for failure to perform her duties; that consequently the Executive Officer was suspending her pending an investigation.

Petitioner's counsel requested reinstatement and sent the Executive Officer a series of letters of reference from prominent judges and attorneys [Exs. 2, 3].

The Executive Officer advised Petitioner on December 7, 1964, that, at a meeting of the Committee on December 1, 1964, it had been decided—"after extended discussion"—to terminate Petitioner's employment [Ex. 4].

Petitioner asked for a hearing on December 15, 1964. On December 28, 1964, the Executive Officer informed her that the Committee had refused any "further" hearing, at its meeting on December 22, 1964 [Ex. 7].

On January 28, 1965, counsel requested two judges in executive capacity in the Superior Court, Respondent Kenneth N. Chantry, as Presiding Judge, and Respondent Lloyd S. Nix, as Chairman of the Personnel and Budget Committee, to reconsider her case [Ex. 8].

On February 16, 1965, Petitioner received—for the first time, she alleges—a copy of the complaint lodged against her by Judge Blake [Exs. 8, 9]. She obtained testimony from jurors who were eye-witnesses to the in-

cident and, on April 8, 1965, she filed a formal answer and petition for hearing with the Court [Ex. 13].

This second request for hearing was finally denied at a Committee meeting on May 13, 1965 [Ex. 16].

Claiming that she had in fact been denied an opportunity to put on testimony in person or by counsel, to subpoena witnesses, to examine all of the evidence against her, and to defend against or explain away the charges, Petitioner believed that she had been denied any available administrative remedy [Exs. 15, 16].

Petitioner sought redress by petition to the District Court of Appeal on June 11, 1965, alleging denial of due process of law, of equal protection of the law, and of the protectible right to work, under the U. S. Constitution *(supra)* and the California Constitution *(supra)*.

On June 14, 1965 the Appellate Court issued its Minute Order denying her petition for an Alternate Writ of Mandate which, if granted, would have compelled Respondents to restore her to full status as an official reporter of the Respondent Court or show cause why they had not done so.

Petitioner then petitioned the State Supreme Court for a hearing on the same issues *(supra)*, but was denied a hearing by Minute Order dated July 14, 1965.

Having exhausted her remedies in the State courts, Petitioner respectfully seeks a Writ of Certiorari to review the refusals in the form of Minute Orders without opinions by the District Court of Appeal of the State of California, Second Appellate District, and of the Supreme Court of California, to hear her petition for a Writ of Mandate.

ARGUMENT.

I.

In Terminating Petitioner's Employment Without Granting Her a Hearing After Her Appeal From Such Action the Superior Court of the State of California Denied Petitioner Due Process of Law in Violation of the Fourteenth Amendment.

Rule 32-7-u of the Los Angeles Superior Court provides that any regular employee of the Superior Court may appeal an order terminating employment to the Personnel and Budget Committee of the Court, and that upon considering such an appeal the committee *"may"* hold a hearing thereon.

In 71 Harvard Law Review, 401, 420 (1958), Professor Jaffee states

> "In our system of remedies, an individual whose interest is acutely and immediately affected by an administrative action, presumptively has a right to secure at some point a judicial determination of its validity."

The right to a hearing is one of the "rudiments of fair play" *M. & St. Paul Ry. Co. v. Pott,* 232 U.S. 165, 168, 34 S. Ct. 301, 58 L. Ed. 554, assured to every litigant by the Fourteenth Amendment as a minimal requirement. *West Ohio Gas Co. v. Public Utilities Commission,* 294 U.S. 79, 55 S. Ct. 324, 79 L. Ed. 761.

All the more insistent is the need when power has been bestowed too freely, that the inexorable safeguard of a fair and open hearing be maintained in its integrity. *St Joseph Stock Yards Co. v. United States,* 298 U.S. 38, 73, 56 S. Ct. 720, 80 L. Ed. 1033. *Ohio Bell Telephone Co v. Public Utilities Com.,* 301 U.S. 292, 304, 57 S. Ct. 724, 730, 81 L. Ed. 1093.

This court has held that Federal public servants are entitled to a hearing from the federal courts unless the governmental employer has provided for one or a hearing is pending. This conclusion was reached where the governing employment act made *no* provision for administrative or statutory review of an order discharging public employees. *United Public Workers of America v. Mitchell,* 330 U.S. 75.

In *Morgan v. United States,* 304 U.S. 1, 18 the Supreme Court said,

> "But a full hearing—a fair and open hearing—requires more than that. The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them."

In *Desert Club v. Board of Supervisors,* 141 Cal. App. 2d 446 the Appellate Court said,

> "While administrative bodies are not expected to observe meticulously all of the rules of evidence applicable to a court trial, common sense and fair play dictate certain basic requirements for the conduct of any hearing at which facts are to be determined. Among these are the following:
>
> . . . cross examination within reasonable limits must be allowed."

Before the Right of Public Employment May Be Taken Away the Employee Should Have Notice and All Opportunity to Be Heard.

Under California statutes, when a public agency or other instrumentality of the State seeks to discharge a public employee *under Civil Service,* the employer must conform to procedures involving a personal hear-

ing, submission of evidence, interrogation and cross-examination of witnesses, and opportunity for the employee to refute or explain the charges against him (Cal. Gov. Code Secs. 11513, 19578, 19590, Code of Civ. Proc. Sec. 2055, Gov. Code Secs. 19583, and 19587). (Addendum II.)

While Petitioner concedes, by necessity, that the Statute governing the position of court reporter provides that they serve "*. . . at the pleasure of the Court and may at any time be removed by the court in its discretion.*" (Gov. Code Sec. 69894.1, or else at the discretion of a majority of the judges, if the applicable statute is that in effect when she was engaged (Gov. Code Sec. 70043), *such discretion cannot be arbitrarily exercised.*

In *Wilson v. City of Los Angeles,* 54 Cal. 2d 61, 63, 66; 4 Cal. Rptr. 489, 351 P. 2d 799), the California Supreme Court considered the claim of an applicant for governmental employment *which was not yet subject to the protection of civil service.* Since there was no obligation upon the government to engage her services, *her position was analogous to the statutory position of Petitioner herein.* The court said,

> "The right which petitioner seeks to preserve here—that is, the right to public employment providing that such employment is available and that she meets all reasonable requirements—*is entitled to protection, at least against deprivation thereof by arbitrary means*" (p. 63).

Again (p. 66), the court acknowledged that

> "We are bound by those decisions of the United States Supreme Court which impose the require-

ments of due process on *all governmental action,* including the determination of loyalty as a qualification for municipal employment." (Emphasis added).

The Supreme Court of California has established that one employed in public employment cannot be removed therefrom arbitrarily or in disregard of constitutional rights. *Fort v. Civil Service Commission,* 61 Cal. 2d 331, 392 P. 2d 385; *Wilson v. City of Los Angeles,* 54 Cal. 2d 61, 63, 66, 4 Cal. Rptr. 489, 351 P. 2d 799.

Officials of San Francisco Municipal Court have recognized the ministerial duties of their Court reporters to include them in the City and County Civil Service system, Cal. Govt. Code 74516, hence treating them as employees rather than as personnel whose tenure depends on the pleasure of the court. Govt. Code 72194—13 Cal. Jur. 2d 509, Courts Sec. 34.

Analogous constitutional rights of government employees have been protected from arbitrary impairment. *Slochower v. Board of Education,* 350 U.S. 551.

Similarly, rights of voters to notice and an opportunity to be heard before cancellation of registration have been upheld by the California Court, *Pierce v. Superior Court,* 1 Cal. 2d 759.

Just as the violation of the right to suffrage under state election laws is a federally protected right, so too should this court determine that the right to governmental employment under state laws is a federally protected right (*Gray v. Saunders,* 372 U.S. 375).

The obviously palpable result and legal effect of the decision of the District Court of Appeal to refuse to

issue an alternative writ of mandamus, which refusal was upheld by the Supreme Court, was to deprive Petitioner of a valuable right without due process of law.

Judicial action is within the due process clause of the Fourteenth Amendment. *Brinkerhoff-Faris Co. v. Hill,* 281 U.S. 673 (50 S. Ct. 451, 74 L. Ed. 1107).

Whether acting through its judiciary or through its legislature a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no right to destroy unless there is afforded some real opportunity to protect it (*ibid.*).

A State May Not Deny Due Process by Legislation.

In *Scott v. McNeal,* 154 U.S. 34, alluding to a contention that the parties, a railroad company, which invoked the 14th amendment for the protection of its property, had the benefit of due process of law in the proceedings against it, because it had due notice of those proceedings and was admitted to appear and make defense, the Supreme Court has also said,

> "But a state may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in its court and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law regard must be had to substance and not to form."
>
> *Chicago Burlington Railroad v. Chicago,* 166 U.S. 226.

In *Yick Wo v. Hopkins,* 118 U.S. 373, the Supreme Court there said,

> "Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and unequal hands, * * * it is still within the prohibition of the Constitution."

See also *Henderson v. Mayor,* 92 U.S. 259; *Chy Lung v. Freeman,* 92 U.S. 275; *Neale v. Delaware,* 103 U.S. 370; *Soon v. Crowley,* 113 U.S. 703.

In *Davidson v. United States,* 96 U.S. 97, 102, the Supreme Court said,

> "Can a state make anything due process of law which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition to the states is of no avail, or has no application, where the invasion of private rights is affected under the forms of state legislation."

In *Smythe v. Ames,* 169 U.S. 466, the Supreme Court said,

> "The idea that any legislature, state or federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, federal and state, when their jurisdiction is properly invoked, to see to it that no rights secured by the supreme law of the land is impaired or destroyed by legislation."

Petitioner Had a Right to Be Represented by Counsel.

In *Powell v. Alabama,* 287 U.S. 45, the Supreme Court said,

> "If in any case civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and, therefore, of due process in the constitutional sense."

In *Wilson v. Federal Communications,* 170 F. 2d 793, it was contended that not every act of a Commission or a court must be preceded by a hearing. Disposing of this contention, the Court of Appeals said, "Due process requires not only opportunity for the presentation of evidence and cross examination of witnesses, but also opportunity for argument."

II.

The Decision of the Personnel and Budget Committee Is Subject to Judicial Review Despite the Provisions of Rule 32-7u That Decisions by the Committee Shall Be Final.

Even in the face of statutes purporting to preclude judicial review, the courts will, in a proper case, grant relief from or set aside administrative actions which are arbitrary, capricious, or both or either, unreasonable, or an abuse of power. 2 Am. Jur. 2d Sec. 646, 650.

The Michigan Supreme Court recognized this fundamental principle stating "But in a constitutional government, the action of all persons, official or private, which is in violation of constitutional rights is simply

null and void." *Dullam v. Wilson,* 53 Mich. 392, 19 N.W. 112, 120 (1884).

In *Hospoder v. United States,* 209 F. 2d 427, 3d Cir. 1953 the court of appeals there declared that, notwithstanding statutory restrictions upon judicial review of decisions by administrative officials, mandamus would lie. To same effect: *Wellman v. Whittier,* 259 F. 2d 163, 104 U.S. App. D.C. 6.

The Administrator of Veterans Affairs was held not to have power to enter a judgment against a veteran in an *ex parte* proceeding without notice and hearing. *Hines v. U. S. ex rel. Marsh,* 105 F. 2d 85, 70 App. D.C. 206.

Despite Petitioner's request therefor, she was refused the opportunity to face her accusers, to test their accusation by cross-examination, to answer with evidence of her own, or to discuss the nature of the "investigation" privately conducted by the Committee which decided the matter. Such a procedure hardly contributes to our "scheme of ordered liberty." Serious financial and other damage has been done to Petitioner in violation of "principles of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."—*Palko v. Connecticut,* 302 U.S. 319, 325, 82 L. Ed. 288 (1937).

> "The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights."—*Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 170, 95 L. Ed. 817, 853.

III.

The Petitioner Was Denied the Equal Protection of the Law in Violation of the Fourteenth Amendment by the Application of Rule 32-7u of the Los Angeles Superior Court.

A fundamental requirement of both the California and United States Constitutions is that which enjoins against arbitrary classification and treatment of persons occupying similar positions. (U.S. Constitution, 14th Amendment; California Constitution, Art. I, Sec. 21).

Being public employees the court reporters must be treated by their superiors in the same manner as are personnel who perform similar work for other instrumentalities of the government.

But it is the responsibility of the government to see that any distinction in treatment bears some reasonable relationship to the purpose of the specific governmental act under test.—*Franchise Motor Freight Association v. Seavey,* 196 Cal. 77, 235 Pac. 1000 (1925).

In *Lewis v. City of Grand Rapids,* 222 F. Supp. 349 (1963) D.C. Mich., an action was brought involving the denial of a transfer of a liquor license. The Plaintiff claimed the refusal denied him his constitutionally protected right of due process and equal protection of the law guaranteed by the Fourteenth Amendment of the United States Constitution.

In upholding Plaintiff's contentions, despite the fact that the statute provided for discretionary approval of the transfer, the court concluded that this discretionary action may be challenged by judicial review as arbitrary, unreasonable, or otherwise unconstitutional.

The California Appellate Court has declared that laws in respect to liens on wages could not constitutionally deprive a debtor of his right to notice of the claim and a right to dispute it. *Morris Plan Co. v. State of California,* 73 Cal. App. 2d 415.

In the present case the rule of the Superior Court based upon a section of the Goverment Code, in effect, not only deprives the Petitioner, of her present wages but perpetually would deprive her of all future wages which she was entitled to earn under her employment.

Petitioner does not contravert the right of the Superior Court of California to terminate the employment of the court reporters or other public employees under their jurisdiction for insubordination.*

Insubordination can rightfully be predicated only upon the refusal to obey some order which a superior officer is entitled to give and entitled to have obeyed. *Sheehan v. Board of Police Commrs.,* 197 Cal. 70, 78.

Petitioner was entitled to present evidence at a hearing represented by counsel to show that she had not been guilty of insubordination to a judge then her immediate superior.

Garvin v. Chambers, 195 Cal. 212, 224, 232 Pac. 696.

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*Insubordination has been defined by the California courts as a wilful refusal to obey *reasonable* orders of an employer. *Wilbur v. Office of City Clerk,* 143 Cal. App. 2d 636, 300 P. 2d 84.

IV.

"The Right to Work" Is Protected by the Due Process Clause of the Fourteenth Amendment.

The right to work is protected by the Constitutions of the United States and the State of California against attack other than by the exercise of due process of law.

James v. Marinship Corp., 25 Cal. 2d 721, 731, 155 P. 2d 329 (1944);

Suckow v. Board of Medical Examiners, 182 Cal. 247, 187 Pac. 965 (1920);

Schware v. Board of Bar Examiners, 353 U.S. 232, 1 L. Ed. 2d 796 (1956);

United States Constitution, 14th Amendment;
California Constitution, Art. I, Secs. 1, 13.

This Honorable Court applied the rule in *Wieman v. Updegraff*, 344 U.S. 183, 191-192. There, the petitioners had challenged the constitutionality of an Oklahoma statute requiring a loyalty oath as a condition of public service. Plaintiffs were college instructors at state schools who had refused to take the oath.

The court held that, while individuals do not have a constitutionally protected right to public employment, constitutional protection under due process does extend to the public servant whose exclusion under a statute is patently arbitrary or discriminatory.

While this court set no standards of patently arbitrary or discriminatory action, it accepted as requiring no argument what would be the consequences visited upon a person excluded from public employment on disloyalty grounds. "In the view of the community, the stain is a deep one" (p. 191).

As this court appeared more concerned with the effect on a public employee of rules and regulations which, in application, might impair his constitutional safeguards, than with ". . . whether an abstract right to public employment exists" (p. 192).

Even privileges dispensed by government cannot be withdrawn arbitrarily and without meeting the minimal requirements of justice.

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 165, 95 L. Ed. 817, 850 (1951);

Wilson v. City of Los Angeles, supra;

Andrews v. State Board of Registration, 123 Cal. App. 2d 685, 267 P. 2d 352 (1954).

The court judicially knows that in common parlance each certified shorthand reporter is referred to as a "Court Reporter." In the instant case, such a court reporter has been discharged by the largest court in the State. Such action by Respondent Court cannot fail to stigmatize the Petitioner henceforward, and seriously impair her ability to earn a livelihood. Such a stigma is no less grave than the stigma of disloyalty which this court deplored in *Weiman v. Updegraff, supra.*

That a denial of employment can result in denial of due process of law was recognized by the California Supreme and Appellate Courts.

James v. Marinship Corp., 25 Cal. 2d 732;

Brecheen v. Riley, 187 Cal. 121, 124, 125 (1921).

In those cases where a person may have no vested right to engage in a certain business, the Courts have zealously upheld the right to a fair and impartial hearing con-

consistent with constitutional principles applicable to Judicial procedures. *Andrews v. State Board of Registration* 123 Cal. App. 2d 685, 693, 267 P. 2d 352 (1954).

The court held, in *Abrams v. Daugherty,* 60 Cal. App. 297, 301 (1922), that the U.S. Constitution, 14th Amendment, forbids depriving any one of life, liberty, or property without due process of law. The court construed the California Constitution, Art. I, Sec. 1, as guaranteeing all men certain inalienable rights, including the possession and protection of property. The court ruled that Section 13 of the State Constitution repeated for state application the proscriptions of the U.S. Constitution, 14th Amendment.

Thus, the court decided, no one can be deprived of his property without notice and an opportunity for hearing before some tribunal that is authorized to determine the question.

The right to work and to hold gainful employment, whether it be public or private, is a most valuable and practical interest. The national and state public policy favoring full employment would *per se* convert it into a protectable property right.

This practical interest of an individual in his material well-being was recognized by the State Appellate Court long before it had been formalized into economic public policy.

Where (as here) the discharge of a public employee results in the substantial impairment of the right to pursue her chosen profession, the fundamental right to engage in that profession requires that the safeguards of due process surround the discharge. The court ruled

that notice and hearing, at least, are required, in *Angelopoulos v. Bottorff*, 76 Cal. App. 621, 245 Pac. 447 (1926).

> "Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, *and the reasonableness of the action depends on fact findings,* the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. . . . We have formalized these protections in the requirements of confrontation and cross-examination." (Emphasis added).—
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> *Greene v. McElroy,* 360 U.S. 474, 3 L. Ed. 2d 1377 (1959);

and see:

> *English v. City of Long Beach,* 35 Cal. 2d 155, 217 P. 2d 22 (1950).

In the absence of clear language to the contrary, it cannot be assumed that the Legislature intended to vest in Respondent Court the *arbitrary power* to discharge petitioner, even if a delegation of arbitrary power were constitutionally acceptable.

After citing several cases to that effect, this Honorable Court in *Greene v. McElroy, supra,* wrote:

> "These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the nation's lawmakers, even in areas where it is possible that the Constitutional presents no inhibition."

Finding that,

> "in the instant case, petitioner's work opportunities have been severely limited on the basis of a fact determination rendered after a hearing which failed to comport with our traditional ideas of fair procedure,"

the Court held that this procedure was unacceptable in the absence of explicit authorization, and found it unnecessary to reach the constitutional question.

The Right to Seek Public Employment Is a Right Protected by the Fourteenth Amendment.

The right to seek and hold public employment should be protected against termination is disregard of constitutional rights. *James v. Marinship Corp.*, 25 Cal. 2d 721, 733, 734 (1944).

The absence of compulsion to seek public employment should not exclude one by "state imposed criteria forbidden by the Constitution." *Torcaso v. Watkins*, 367 U.S. 488, 495-496.

In a case involving governmental action directed against an individual whose rights, *e.g.*, to work, may be concerned, it is necessary to assess the extent to which considerations of due process of law should govern. It is submitted that the degree of protection to which the individual is entitled is properly determined by weighing the harm which could result to him from the governmental action against the harm which might result to others by providing the protection of due process. Then among alternative procedures which are reasonably equally feasible, the procedure offering the individual the greatest measure of protection must be followed.—Van Alstyne, *Procedural Due Process and State*

University Students, 10 U.C.L.A. L. R. 368, 381 *et seq.* (1963). *James v. Marinship, supra,* at 734.

The right to seek public employment protected under the Fourteenth Amendment would be meaningless if the fundamental right to *hold* such employment against *ex parte* termination in violation of the public policy of the state of California was not federally protected. *James v. Marinship, supra.* at p. 734.

Conclusion.

This case involves not only the protectable right of public employment but at stake is petitioner's good name, and the constitutional right to seek further public employment without the stigma of a discharge entered without a proper hearing that comports with due process of law. "The safeguards which are ordinarily provided and invoked to protect reputation and rights in courts of justice should in substance be observed in proceedings of the character here under consideration." *Garvin v. Chambers,* 195 Cal. 212, 225 (1924).

The right to practice the profession of court reporting is like the right to practice any profession "a valuable property right, in which, under the constitution and laws of the State of California one is entitled to be protected and secured." *Suckow v. Alderson,* 182 Cal. 247, 249 (1920), *supra.* The instant case raises important constitutional questions involving numerous public employees in the State of California.

This case is worthy of the consideration of the highest court in the nation.

Respectfully submitted,

PHILL SILVER,

Attorney for Petitioner.

ADDENDUM.

TABLE OF APPLICABLE CONSTITUTIONAL AND STATUTORY LAW.

I.

Constitutional Provisions.

A. United States Constitution.

1. XIV Amendment, Section 1.

B. California Constitution.

1. Article I, Section 13.
2. Article I, Section 21.
3. Article I, Section 1.

II.

Applicable Statutes.

(1) Government Code Sec. 11513. Evidence. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

(2) Government Code Sec. 19578. Hearing. Time for, Notice, and Conduct of proceedings. Whenever an answer is filed to a punitive action other than a suspension without pay for 10 days or less, the board or its authorized representative shall within a reasonable time hold a hearing. The board shall notify the parties of

the time and place of the hearing. Such hearing shall be conducted in accordance with the provisions of Sec. 11513 of the Government Code, except that the employee and other persons may be examined as provided in Section 19580 and the parties may submit all proper and competent evidence against or in support of the causes.

(3) Government Code Sec. 19580. Examination of employee and others. Either by deposition or at the hearing the employee may be examined and may examine or cause any person to be examined under Section 2055 of the Code of Civil Procedure.

(4) Code of Civil Procedure Sec. 2055. Examination of adverse party, interested person or officer, etc., of such party or person, and witness other than party. A party to the record of any civil action or proceeding or a person for whose immediate benefit such action or proceeding or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or the directors, officers, superintendent, member, agent, employee, or managing agent of any such party or person, or the agent, officer or employee of a municipal corporation which is a party to the action or proceeding, may be examined by the adverse party as if under cross-examination, subject to the rules applicable to the examination of other witnesses. The party calling such adverse witness shall not be bound by his testimony, and the testimony given by such witness may be rebutted by the party calling him for such examination by other evidence. A party, when so called, may be examined by his own counsel, but only as to the matters testified to on such examination.

A witness other than a party, when so called, may be cross-examined by counsel for a party adverse to the

party calling such witness, but only as to matters testified to on such examination.

(5) Government Code Sec. 19583.5. Filing charges against employee; Consent of board of appointing power; Right to Answer; Hearing; Power to take punitive action. Any person with the consent of the board or the appointing power may file charges against an employee requesting that punitive action be taken for one or more causes for discipline specified in this article. The employee against whom such charges are filed shall have a right to answer as provided in this article. In all such cases a hearing shall be conducted in accord with this article and if the board finds that the charges are true it shall have the power to take such punitive action as in its judgment is just and proper.

(6) Government Code Sec. 19587. Rehearing: Setting down for hearing: Conduct of Hearing. If the petition for rehearing is granted, the matter shall be set down for hearing by the board or its authorized representative. The hearing shall be conducted as to the matters on which granted in substantially the same manner and under like rules of procedure as an original hearing upon charges under this article.

(7) Government Code Sec. 54957. Executive sessions: Purpose: Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding executive sessions during a regular or special meeting to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee by another public officer, person or employee unless such officer or employee requests a public hearing. The legislative body also may exclude from any such public or private meeting, during the

examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organization as defined in Sec. 54952 from holding executive sessions to consider matters affecting the national security, or the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee by another public officer, person or employee unless such officer or employee requests a public hearing. (Last sentence is same as in above paragraph).

(8) Government Code Sec. 69894.1. Officers and employees in county with population over 6,000,000: Appointment: Salaries (etc.): Removal. In each county with a population of over 6,000,000 a majority of the judges of the superior court may appoint the following officers and employees whose salaries shall be:

. . .

	Schedule
(t) One hundred seventy court reporters	49

. . .

Whenever a reference to a numbered salary schedule is made in this section(,) that found in the salary ordinance of the County of Los Angeles shall apply. Reduction of the schedule applicable to a class by reason of the adoption of this salary plan or subsequent reclassification of positions for organizational purposes shall not result in a lower salary rate to incumbents of such positions. The court is authorized to regulate by rule the status of employees so affected.

All personnel appointed pursuant to this article shall serve at the pleasure of the court and may at any time be removed by the court in its discretion.

(9) Government Code Sec. 69894.3. Right of court employees in county having population over 2,000,000 to step advancement, vacation, sick leave, holiday benefits, etc.

Employees of the superior court in each county having a population of over 2,000,000 shall be entitled to such step advancement, vacation, sick leave, holiday benefits and other leaves of absence and other benefits as may be directed by rules of the court. Where statutes require implementation by local ordinances for the extension of benefits to local officers and employees, these may be made applicable by rule to court personnel, including but not limited to jurors, and judges.

. . .

Rules of the court may include other matters pertaining to the general administration of the court, including conditions of employment of court personnel, including but not limited to jurors and judges. When such rules are adopted by a majority of the judges and filed with the Judicial Council they shall have the same status as other rules of court adopted pursuant to Sec. 68070 of this code.

. . .

(10) Government Code Sec. 68070. Rules: May be made by courts of record Limitations. Every court of record may make rules for its own government and the government of its officers not inconsistent with law or with the rules adopted and prescribed by the Judicial Council.

. . .

(For rules adopted by judicial council that may apply, see notes following these rules on C. C. P. Appendix). Also 25 Ops A. G. 228. in re rules and regulations for court employees.

(11) Government Code Sec. 68072. Rules adopted by Judicial Council: When effective. Rules for courts of record adopted by the Judicial Council or other authority shall take effect on a date to be fixed in the order of adoption. If no effective date is fixed, rules affecting the Supreme Court and district courts of appeal shall take effect 60 days after their adoption, and rules affecting the superior courts, the municipal courts, or justice courts shall take effect 30 days after their adoption.

(For notes on rule making power and requirements, see notes following these rules on Albermont Petroleum, Ltd. vs. Cunningham (1960) 186 Cal. App. 2d 84; 9 Cal. Rep. 405.

(12) Government Code Sec. 69898. County of 2,000,000 or over: Additional Employees. In each county with a population of 2,000,000 and over, a majority of the judges of the superior court may appoint the following employees whose monthly salaries shall be:

. . .

One year after the effective date of the amendmer to this section enacted by the Legislature at the 1957 Regular Session, salaries for the following positions referred to in this section shall become:

		1st Step	2d Step	3d Step
. . .				
(19)	Court transcriber-secretaries	$395	$417	$440
(20)	Supervising court transcriber-secretary	440	464	489
(21)	Court reporter assignment secretary	464	489	516

The salaries provided for in this section for employees on the three-step plan shall be paid as provided in Secs. 69899.5 & 69899.6.

(13) Government Code Sec. 69941. Phonographic reporters for superior courts: Appointment. The judge or judges of any superior court may appoint a competent phonographic reporter, or as many such reporters as there are judges, to be known as official reporter or reporters of such court, and such pro tempore official reporters as the convenience of the court may require. The reporters shall hold office during the pleasure of the appointing judge or judges.

(14) Government Code Sec. 69941. Contra case note, which is answered and distinguished by first four cases in abstracts, page 1: Los Angeles vs. Vaughn (1961) 55 Cal. 2d 198, 358 P. 2d 913: Superior Court has more than minimal control over reporter *with reference to preparing and furnishing of transcripts in civil cases;* it has absolute control over him at all times through its power to discharge him at will.

(15) Government Code Sec. 69942. Phonographic reporters for superior courts: Evidence of good moral character: Examination by members of bar: License from Certified Shorthand Reporters Board.

No person shall be appointed to the position of official reporter of any court unless there is satisfactory evidence of his good moral character, and unless he has been first examined as to his competency by at least three members of the bar practicing in the court.

(Sec. 69942.1) and designated by the judge or judges of the court, or has first obtained a license to practice as a certified shorthand reporter from the Certified Shorthand Reporters Board.

(16) Government Code Sec. 70043. Phonographic reporters: Appointment: Number: Term of Office. To assist the court in the transaction of its judicial business by having the duties of phonographic reporters performed, a majority of the judges of the superior court of the county may appoint as many regular official phonographic reporters as necessary to report the proceedings in the court and to perform such duties. The number of reporters so appointed shall not exceed at any one time the number of offices of judge provided by law for the court. The reporters shall hold office during the pleasure of a majority of the judges of the court. The number of reporters and compensation of reporters in counties over 2,000,000 population shall be as provided in Section 69894.1.

III.

Superior Court Rules.

Los Angeles Superior Court Rules Rule 32.

Section 6. (The Executive Officer: Selection, Qualifications, Powers and Duties.)

(a) *(Selection.)*

(1) Should the position of Executive Officer, authorized under the provisions of Section 69892.1 of the Government Code, become vacant, the Presiding Judge shall call a meeting of the Personnel and Budget Committee for the purpose of taking such procedural steps as it may deem best to find the most qualified applicant.

(2) The Committee shall recommend to the Judges not less than three applicants whom it finds to be best qualified for the position.

(3) The names of applicants shall be placed on a ballot, arranged alphabetically and voted on in exactly the same manner as ordered in Section 1(e) of this rule. A majority vote of the judges of the court will be required to elect the Executive Officer.

(b) *(Qualifications.)*

(1) The Executive Officer shall be a citizen of the United States and not less than thirty years of age. Upon appointment he shall be or become a resident of Los Angeles County.

(2) It is desirable that he shall have had experience in an administrative capacity either in private or public employment, and experience in office management and in personnel management either in private or public employment.

(3) It is also desirable that he shall have substantial knowledge of government, of judicial administration, and of the legislative process, a working knowledge of sound budgetary practices, substantial training and experience in the field of public relations, either in private or public employment, and the ability to work with others.

(c) *(Powers and Duties.)*

Pursuant to Section 69892.1 of the Government Code, the Superior Court declares that the powers and duties of the Executive Officer shall be:

(1) To execute, on behalf of the court and subject to the supervision and direction of the Presiding Judge, the administrative supervision and control of the nonjudicial activities of the court.

(2) To establish such divisions in the executive office as may be deemed advisable.

(3) To delegate his duties where necessary, and to assign or supervise and direct the work of all officers and employees of the court, except commissioners.

(4) To administer the system of personnel administration provided for in Section 7 of this Rule.

(5) To prepare and administer the budget of the Superior Court and to represent the court in any matters pertaining to the budget which may be under consideration by the Board of Supervisors.

(6) To maintain all accounting and property control records, including payroll records of the court, and records with respect to compensation of assigned judges.

(7) To purchase law libraries, supplies and equipment for the judges and for supporting court personnel, and to control their storage and distribution.

(8) To represent the court in its negotiations relative to the establishment and maintenance of courtrooms, chambers and offices.

(9) To initiate studies and prepare appropriate recommendations and reports to the Presiding Judge, to committees of the court and to the court relating to the business of the court and its administration, including studies relating to the operations of special departments and branches.

(10) To collect, compile and analyze statistical data on a continuing basis concerning the status of judicial and non-judicial business of the court, and the preparation of periodic reports based on such data.

(11) To serve in a liaison capacity for the court with the Judicial Council, committees of the Legislature, the Board of Supervisors and County Administrative Officer, County Clerk, as ex officio clerk of the Court, the

Sheriff, State Bar of California, Bar Associations and civic groups, with reference to matters relating to the administration of the court.

(12) To make arrangements for, and to attend, all meetings of the Judges of the Court, assist the Presiding Judge in the preparation of agenda, and as Secretary of the Court to prepare minutes of all meetings of the judges. The Executive Officer shall also attend meetings of committees of the Court upon request of the committee chairman or the Presiding Judge.

(13) To serve as Jury Commissioner of the Court.

(14) To prepare an annual report concerning the operations of his office during the preceding calendar year, together with his recommendations to improve the administration of the court and the more expeditious disposition of its business.

(15) To employ and assign officers or attaches to perform the duties outlined in Section 26806 of the Government Code pertaining to interpreters.

(d) *(Directives to the Executive Officer.)* Except as otherwise authorized by the Presiding Judge, all orders and directives of the Court to the Executive Officer shall be transmitted by the Presiding Judge. All requests by the several judges or by committees of the court for the assistance of the Executive Officer or his staff shall be directed to the Presiding Judge.

(e) *(Executive Officer Pro Tempore.)* In the temporary absence of the Executive Officer he may, with the approval of the Presiding Judge, designate one of his principal subordinates as Executive Officer pro tempore. In the event of a vacancy in the office, or the temporary absence of the Executive Officer without

having designated a subordinate to act in his place, the Presiding Judge may temporarily designate an Executive Officer pro tempore, who shall have all the powers and duties of the Executive Officer.

Section 7. (Personnel Administration.)

(a) *(Responsibility of the Executive Officer.)* It is the responsibility of the Executive Officer to effect appointments, transfers, and terminations of service, of all employees of the Superior Court, other than commissioners, after consultation with the judge of the department, or division head concerned and with the approval of the Presiding Judge. He shall administer the sick leave, vacation, and other leave provisions of these rules. The Executive Officer shall also provide information and advice to the Personnel and Budget Committee on matters affecting salary administration. He shall establish a system to assure employee training and the maintenance of employee morale. He shall provide for personnel records and a performance rating system which may be used in support of recommended promotions, salary increases, and disciplinary actions. He will consult with the Presiding Judge and the Personnel and Budget Committee on policy matters with respect to personnel administration.

(b) *(Classes of Positions.)* Positions of the Superior Court are created pursuant to Sections 69894.1 and 69894.2 of the Government Code. The Executive Officer has the responsibility for defining the purpose of each class of position in accordance with functional responsibilities laid down by the court. He also has responsibility for assigning specific duties to individual positions which in the exercise of his discretion are con-

sistent with functions allocated to each of the various classes.

(c) *(Personnel Selection.)*

(1) Appointments to all positions in the service of the Court shall be made only from eligible lists established in the manner set forth in this rule, unless otherwise authorized by the Personnel and Budget Committee.

The Executive Officer shall give public notice inviting applications from qualified applicants to fill positions. Such notice shall be posted on the bulletin board of the County Courthouse. Additional notice, such as advertising, or news releases, shall be given when the Personnel and Budget Committee or the Executive Officer deems it expedient with respect to particular positions in order to obtain qualified applicants.

(2) Eligible lists shall be established from competitive examination of qualified applicants. Such examinations may be by means of written tests, oral tests, evaluation of education, experience and personality, or through such combination of these as may be recommended by the Personnel and Budget Committee and prescribed by the Executive Officer. Qualified applicants who have been tested and scored against a fixed standard may be placed on such lists.

(3) Appointments by the Executive Officer shall be made on a probationary basis after first conferring with any judge having administrative responsibility in the department or district affected by the appointment.

(d) *(Probationary Period.)* Every employee will be engaged on a probationary basis for a six months period, during which period his services may be terminated

without the right of appeal accorded to regular employees by Section 7(u) of this Rule. On or before thirty days prior to the expiration of the probationary period a performance rating form shall be filed by the employee's immediate superior (judge or supervisory division head). If such report shall indicate that the employee has performed his duties satisfactorily, upon certification thereof by the Executive Officer, the employee will become a regular employee of the Court at the expiration of the probationary period.

(e) *(Orientation.)* It is the responsibility of the Executive Officer to orient new employees of the court as to the duties and responsibilities of their respective positions.

(f) *(Training.)* Promotional opportunities shall be provided employees whenever the Personnel and Budget Committee of the Court shall so recommend. All employees are to be encouraged to further qualify themselves, through education or otherwise, for such promotional opportunities as may arise within the court. It is the responsibility of the Executive Officer to encourage and to program such training. A complete record of outside training undertaken by employees will be added to their personal folders for consideration when promotional opportunities occur.

(g) *(Merit Rating.)* The immediate superior (judge or division head) shall complete a performance report on each employee not less often than once a year. The report shall be on a form prescribed by the Executive Officer and will be reviewed by him for possible action. Performance ratings are an appraisal by the immediate supervisor of the efficiency with which an employee is

carrying out his duties. Personal traits, quality and quantity of work, and general suitability for the position are important factors in such ratings. Performance ratings shall be discussed with the individual by the division head, or the Executive Officer whenever the Executive Officer deems it necessary. In such instance the employee rated will be asked to sign the form indicating that there is a clear understanding as to standards of performance and basis for improvement.

(h) *(Physical Examinations.)* All applicants, before employment with the court, may be required to take and pass a physical examination, to be performed by a qualified physician.

(i) *(Work Week and Attendance.)* The working hours of employees will be set by the Executive Officer, or the appropriate departmental judge or division head. A five-day week is the basic work week for the court and in no case will overtime be authorized unless eight hours in a working day, or forty hours in a normal working week, have been completed. Regular attendance and punctuality are expected of all employees. It is required that the employee's immediate supervisor be notified without delay if such employee is unable to report for work because of illness or any other reason.

(j) *(Classification and Pay.)* All officers and employees of the court will be classified and paid in accordance with the plan contained in Section 69894.1 of the Government Code. The classification plan of the court will be prepared by the Executive Officer and approved by the Personnel and Budget Committee of the court and by the Presiding Judge. It will be the policy of the court to attempt to maintain salaries of its per-

sonnel in accordance with those prevailing in governmental agencies located in the County of Los Angeles. To this end the Executive Officer is authorized, upon the recommendation of the Personnel and Budget Committee of the court and the approval of the Presiding Judge, to request concurrence of the Board of Supervisors in changes in compensation and numbers and types of court positions, in the manner provided by Section 69894.2 of the Government Code.

(k) *(Schedule and Step Placement of Positions.)*

(1) Positions filled, pursuant to authority contained in Section 69894.1 of the Government Code, shall be placed on a step in the appropriate schedule, and shall be assigned new titles as appropriate, in accordance with policies adopted by the Personnel and Budget Committee and with the approval of the Presiding Judge. The Executive Officer is designated to take such action as is necessary to effectuate policies adopted.

(2) The Executive Officer, with the approval of the Presiding Judge, may authorize special step placement for any person who is appointed to a position where it has been shown that the person immediately prior to appointment was employed by a public or private agency and by reason of accepting employment with the court would receive a reduction in his monthly compensation.

(l) *(Step Advancement and Anniversary Dates.)*

(1) Upon recommendation of the department or division head, and the approval of the Executive Officer, employees of the court, other than Commissioners, may be advanced one step in the schedule to which their position is allocated six months after employment, and thereafter on an annual basis. Except as provided in

subsection (k), new employees will be hired at the initial step in the schedule to which their position has been allocated. Salary increase recommendations will be made concurrently with the submission of a performance report on the anniversary date of the employment of the officer or employee. A positive statement that the employee is performing at above average competence is required to accompany pay raise recommendations above Step C in the compensation plan.

"(2) The anniversary date of court employees shall be the first day of the month closest to one calendar year subsequent to the date of entry into a step rate level, above the minimum of the range. Salary increases, by reason of reclassification, shall establish a new anniversary date for the incumbent of the position affected and no such increase shall exceed two schedules. It is provided further that the Personnel and Budget Committee may authorize changes in anniversary dates or salary rates within the range of any position upon recommendation of the Executive officer with the approval of the Presiding Judge."

(m) *(Per Diem Rates.)* The Executive officer, with the approval of the Presiding Judge, is authorized to designate per diem rates within the range of the schedule of any class for payment of employees hired on a temporary or "as needed" basis.

(n) *(Overtime.)* Overtime for definite work performed may be authorized for those employees at Schedule 43 and below by judges having supervision of as-

signed personnel, or by supervisory personnel designated by the Executive Officer. Overtime may be reported as accumulated when:

(1) Work is in excess of 8 hours in any working day or 40 hours in a week.

(2) Overtime work exceeds one hour in any working day.

(3) The amount of overtime worked, and the reason for authorization, are transmitted promptly to the Executive Officer.

Overtime accumulation on a continuing basis (that is, working extra hours every day, or during specific times on a week by week basis) will not be approved unless the Executive Officer has authorized such procedure, with the approval of the Presiding Judge.

"(o) *(Compensatory Time Off)*

Employees whose vacation status is described in Section 7 (q)(1) and (2) below, who have worked in excess of 8 hours in a single day, or over 40 hours in a week, are entitled to compensatory time off. Whenever feasible, in the discretion of the person having supervision of the department or division, such time off shall be taken within the same bi-weekly period as earned and at the convenience of the employee. Officers and employees whose vacation status is described in Section 7(q)(3) below may not accumulate overtime."

(p) *(Sick Leave.)*

(1) Sick leave benefits are provided to all employees of the Superior Court on the same basis as now pro-

vided to County employees by the County Salary Ordinance. Provided, however, that if part-pay sick leave has been taken by an employee during any calendar period in lieu of full-pay sick leave, such carry-over full pay sick leave shall be reduced by the number of days that part-pay sick leave has been claimed.

(2) The Executive Officer may authorize excess sick leave, with the approval of the Presiding Judge, for employees who have performed long and faithful service for a minimum period of five years, upon a showing of extraordinary financial hardship.

(3) The Executive Officer, or the immediate supervisor of the employee, may require any reasonable proof of illness, including a statement from a physician. A physician's report is mandatory for approval of sick leave in excess of three days.

"(q) *(Vacation)*

Vacation benefits are provided to all court personnel as follows:

(1) For employees having less than 5 years of service, and who are not included in catagory (3)—1 working day per month of service.

(2) For employees with 5 years of service or more and who are not included in category (3)—1¼ working days per month of service.

(3) For employees assigned to positions within classes on schedule 41 or above as of October 1, 1963, and who are not permitted overtime pay—1¾ working days per month of service.

Positions created subsequent to October 1, 1963, shall be placed in one of the above vacation categories by the Executive Officer upon approval of the Personnel and Budget Committee.

At least one-half of the vacation earned must be taken each year and, if not taken, will be forfeited. Excess vacation not taken during any given fiscal year is cumulative up to a maximum of 54 working days. However, not more than one-half of the vacation earned in any year may be carried over for accumulation. Except upon specific authorization of the Executive Officer, vacations shall be taken between the months of May and October. Except as otherwise approved by the Executive Officer, vacations shall be requested at least 30 days in advance of the date vacation is planned."

(r) *(Leave of Absence Without Pay.)* Leave of absence without pay may be taken for extended illness, and other authorized reasons, for a period of not to exceed one year upon the recommendation of the Executive Officer and the approval of the Presiding Judge.

(s) *(Holidays.)* Employees will be excused from work on State holidays or allowed compensatory time off if required to work by reason of necessity.

(t) *(Personal Emergency Leave.)* In case of death or critical illness in the immediate family, employees who have worked with the court for six months may receive up to three days' leave with pay.

(u) *(Termination, Reduction in Rank or Compensation, or Suspension.)* All employees serve at the pleasure of the court. The Executive Officer is authorized to terminate the services, or reduce the rank or compensation, or suspend without pay, any employee other than Commissioners, after consultation with the Judge of the department, or division head concerned, and with the approval of the Presiding Judge. Any regular employee may appeal such action in writing to the Personnel and Budget Committee. Upon considering such appeal the Personnel and Budget Committee may hold a hearing thereon if it deems it advisable. The determination of such appeal by the Personnel and Budget Committee shall be final.